

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO on the)
relation of the State Engineer,)
and THE UNITED STATES OF)
AMERICA)
Plaintiffs)
v.) No. CIV 7941-JC
RAMON ARAGON, et al.) RIO CHAMA STREAM SYSTEM
Defendants) Section 4, Rio El Rito Section

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**COMMUNITY OF EL RITO DITCH ASSOCIATION'S AND ACEQUIA JARAL'S
AMENDED MOTION TO ENFORCE PARTIAL FINAL DECREE AND
TO ENJOIN FURTHER DIVERSION OF WATER**

DEFENDANTS Community of El Rito Ditch Association and Acequia Jaral (hereinafter "Movants") file this Amended Motion to Enforce Partial Final Decree and to Enjoin Further Diversion of Water, (Docket No. 6824), filed 8/19/02. Movants request this Court to enforce the Partial Final Decree on the Rio El Rito Stream System by employing its equitable powers to enjoin further diversion of water from the Rio El Rito via the Jose Romolo Martinez Ditch.. As grounds for their motion, Movants state the following:

1. This Court entered a Partial Final Decree on the Rio El Rito Stream System ("Decree") adjudicating the rights of individual sub-file water rights owners on June 25, 1973.
2. The Decree confirms the water rights of each defendant as against each other defendant based on court orders entered in the individual sub-files.
3. This Court has jurisdiction to enforce the provisions of the Decree and may enter such supplementary orders as may be necessary for the enforcement of the Decree and the individual sub-file orders. Decree at p. iv.
4. Defendants whose water rights are adjudicated by the Decree are enjoined from

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any diversion or use of waters, except in strict accordance with the orders entered in the individual and community ditch association sub-files. Decree at p. iii.

5. The Community of El Rito Ditch Association is comprised of eleven (11) community ditches, including the Acequia Jaral. Decree at p. v.

6. The Acequia Jaral has a priority date of 1799. The Decree has adjudicated rights to use water for the irrigation of 266.2 acres served by the Acequia Jaral. Decree at pp. 4-5.

7. The Decree adjudicates the right to irrigate 9.7 acres to Sub-file No. 32.1. Sub-file No. 32.1 is served by a private ditch, the Jose Romolo Martinez Ditch. Decree at p. 3.

8. The Agreement on Water Rights underlying the Sub-file Order for No. 32.1 was signed by Jose Romolo Martinez. Exhibit 1.

9. Mr. Rudy Martinez, Respondent, whose physical address is State Rd. 554, El Rito, New Mexico, is in physical possession of the Sub-file No. 32.1 lands. Mr. Rudy Martinez is the son of and successor-in-interest to Jose Romolo Martinez.

10. Although there has been no final determination of priority dates for private ditches within the Rio El Rito Stream System, there is credible evidence that the priority date for the Jose Romolo Martinez Ditch is no earlier than 1880. (Dr. John Baxter, "Settlement and Water Use at El Rito," August 1997).

11. The diversion structure by which the Jose Romolo Martinez Ditch diverts water is approximately 1200 feet upstream of the diversion structure for the Acequia Jaral.

12. In early March, 2002, pursuant to NMSA 1978, § 73-2-47, the El Rito Ditch Association posted notice of a March 18, 2002 community meeting of all ditches to discuss the division of water from the Rio El Rito for the upcoming irrigation season. The Jose Romolo Martinez ditch did not send a representative to the meeting.

13. In early June 2002, Rudy Martinez began to divert the *entire* flow of the Rio El Rito via the Jose Romolo Martinez Ditch. The water was used for irrigation of Sub-file No. 32.1. The water not immediately used for irrigation was stored in pond. As a result, *no* water was returned to the Rio El Rito.

14. Diversion by the Jose Romolo Martinez Ditch resulted in there being no water available for diversion and use by individuals served by the Acequia Jaral.

15. Rudy Martinez does not have a listed telephone number. On June 11, 2002, the officers and commissioners of the El Rito Ditch Association visited Mr. Martinez's property in an attempt to discuss the diversion of water via the Jose Romolo Martinez Ditch. Rudy Martinez refused to discuss his diversion of water and ordered the officers and commissioners off his property at gunpoint, firing two shots at the officers' vehicles. A criminal assault and battery complaint has been registered with the District Attorney of the First District Judicial District of New Mexico by the officers and commissioners of the Ditch Association and criminal charges are pending.

16. Rudy Martinez has continued to divert the entire flow of the Rio El Rito, with intermittent exceptions. The water rights owners who would otherwise divert water from the Acequia Jaral have been deprived of the use of any water for irrigation, domestic or other purposes.

17. Although the Partial Final Decree contemplated appointment of a watermaster, Decree at p. iii, there is no watermaster with jurisdiction over this matter at this time.

18. Movants have no other remedy at law.

19. Movants have suffered and shall continue to suffer irreparable harm. As alleged in paragraph 16, above, the water rights owners who would otherwise divert water from the

Acequia Jaral have been deprived of the use of any water for irrigation, domestic or other purposes.

20. The continuing harm suffered by Movants outweighs any damage that may be caused to Respondent Rudy Martinez or other successors-in-interest to Jose Romolo Martinez.

21. It is in the public interest to enforce the provisions of the Partial Final Decree to ensure that the orderly administration of water occurs.

22. There is a substantial likelihood that Movants will succeed on the merits.

23. A copy of the original Motion was been sent to Rudy Martinez at his physical address, State Road 554, Milemarker 13, El Rito, New Mexico 87530 via United Parcel Service and via Certified Mail to Rudy Martinez, General Delivery, El Rito, NM 87530. The certified mail was returned to Movants unclaimed. Respondent did not respond to the original Motion.

24. A copy of this Amended Motion will be served upon Respondent Rudy Martinez in conjunction with the Court's Notice of Hearing on Motion for Injunction and Order to Show Cause.

25. Counsel for the State of New Mexico Ed Newville has been contacted in connection with this Motion and does not oppose this Motion.

WHEREFORE, for the reasons stated above, the El Rito Ditch Association and the Acequia Jaral respectfully ask this Court to

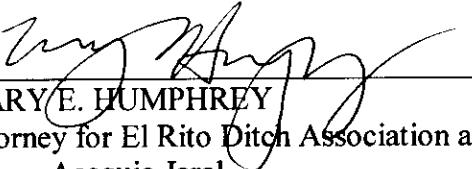
1) Issue an order enjoining Rudy Martinez , or any person or entities working in cooperation with him, from further diversion of water into the Jose Romolo Martinez Ditch for the remainder of this year;

2) Issue an order requiring Rudy Martinez, or any person or entities working in cooperation with him, to consult in good faithwith the Community of El Rito Ditch Association

and the Acequia Jaral, pursuant to NMSA 1978, §73-2-47, prior to the diversion of water from the Rio El Rito in 2003; and

- 3) For such other relief as this Court deems necessary and proper.

Respectfully submitted,

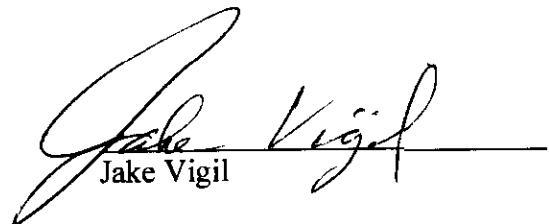

MARY E. HUMPHREY
Attorney for El Rito Ditch Association and
Acequia Jaral
P. O. Box 1574
El Prado, NM 87529
(505) 758-2203

VERIFICATION

STATE OF NEW MEXICO)
)
COUNTY OF RIO ARRIBA) ss.

JAKE VIGIL, being duly sworn, states as follows:

That he is the President of the El Rito Ditch Association and that he has read the Community of El Rito Ditch Association's and Acequia Jaral's Motion to Enforce Partial Final Decree and to Enjoin Further Diversion of Water and that he knows the contents thereof to be true of his own personal knowledge.



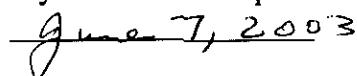
Jake Vigil

THE FOREGOING VERIFICATION was signed and sworn to before me on the 27th day of October, 2002.



Arthur W. Hale
Notary Public

My commission expires:



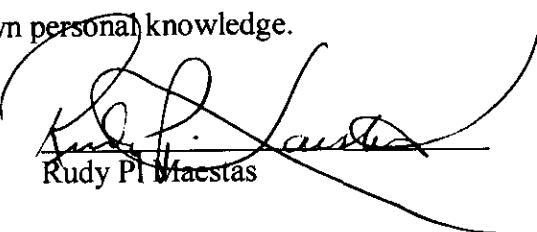
June 7, 2003

VERIFICATION

STATE OF NEW MEXICO)
)
COUNTY OF RIO ARRIBA) ss.

RUDY P. MAESTAS, being duly sworn, states as follows:

That he is the Secretary of the El Rito Ditch Association and a commissioner of the Acequia Jaral and that he has read the Community of El Rito Ditch Association's and Acequia Jaral's Motion to Enforce Partial Final Decree and to Enjoin Further Diversion of Water and that he knows the contents thereof to be true of his own personal knowledge.


Rudy P. Maestas

THE FOREGOING VERIFICATION was signed and sworn to before me on the 3rd day of October, 2002.


Arthur Wipfle Hare
Notary Public

My commission expires:

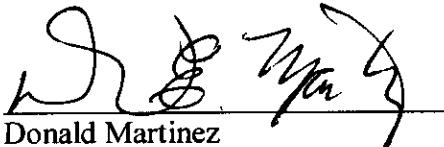
June 7, 2003

VERIFICATION

STATE OF NEW MEXICO)
)
COUNTY OF RIO ARRIBA)
 ss.

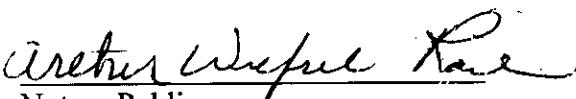
DONALD MARTINEZ, being duly sworn, states as follows:

That he is the Treasurer of the El Rito Ditch Association and that he has read the Community of El Rito Ditch Association's and Acequia Jaral's Motion to Enforce Partial Final Decree and to Enjoin Further Diversion of Water and that he knows the contents thereof to be true of his own personal knowledge.



Donald Martinez

THE FOREGOING VERIFICATION was signed and sworn to before me on the 8th day of October, 2002.



Arthur Wefel Rose
Notary Public

My commission expires:

June 7, 2003